Supreme Court of the United States

OCTOBER TERM, 1965

No. 860

UNITED STATES, APPELLANT

vs.

ANTHONY L. FABRIZIO

ON WRIT OF CERTIORARI TO THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF NEW YORK

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[fol. 1]

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF NEW YORK

No. 8694-C

THE UNITED STATES

vs.

ANTHONY L. FABRIZIO

Attorneys

For U.S.:

John T. Curtin

For Defendant:

A. William De Fillippo

Transporting in interstate commerce papers to be used in wagering, in violation of Section 1953, Title 18, U.S.C.

CRIMINAL DOCKET

OFFENSE: 8/24/64 — 1 Count

STATISTICAL RECORD

J.S. 2 mailed Oct. 5 1964
J.S. 3 mailed
Violation
Title 18
Sec. 1853

COSTS

Clerk
Marshal
Docket fee

DOCKET ENTRIES

DATE		
1964		
Sept.	3	Filed indictment
	3	J.S. 2 made

DATE		
1964		
Sept.	8	Filed Commissioner's transcript and $500 cash bond—surety—Joseph P. Pirozzolo, 405 Holecek Ave., Elmira, N.Y.
	14	Defendant being duly arraigned enters a plea of not guilty
	16	Filed Court Stenographer's minutes of 9/14/64
	22	Filed Notice of Motion to Permit Inspection of Grand Jury Minutes and Supporting Papers, and Notice of Motion for Bill of Particulars and Supporting Papers, returnable at U.S. Court House, Rochester, N.Y., 9/30/64 at 10:00 a.m.
	28	File Government's bill of Particulars
Oct.	12	Filed Defendant's notice of motion to dismiss indictment, returnable at Rochester, N.Y., 10/13/64 at 10:00 a.m.
	13	Motion to dismiss indictment—adjourned 11/9/1964
Nov.	9	Motion by defendant to dismiss indictment—adjourned 12/14/64
Dec.	14	Motion by defendant to dismiss indictment—adjourned to 12/28/64
	28	Motion by defendant to dismiss indictment—adjourned to 1/11/65
1965		
May	17	Motion to dismiss indictment—submitted on papers
Oct.	6	Filed decision and order dismissing the indictment—BURKE, J.

[fol. 2]

Oct.	6	J.S. 3 made
Nov.	4	Filed Govt's. notice of appeal to the Supreme Court

Appeal

[fol. 3]

[File Endorsement Omitted]

[fol. 4]

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NEW YORK

May 1964 Term

No. 8694-C

THE UNITED STATES OF AMERICA

vs.

ANTHONY L. FABRIZIO

Vio. Title 18, U.S.C., Section 1953

INDICTMENT—Filed September 3, 1964

The Grand Jury charges:

That on or about the 24th day of August, 1964, ANTHONY L. FABRIZIO, knowingly did carry in interstate commerce from Keene, State of New Hampshire to Elmira, State of New York, in the Western District of New York, records, papers and writings, to wit: 75 acknowledgements of purchase for a sweepstakes race of the State of New Hampshire, to be used, and adapted, devised and designed for use, in a wagering pool with respect to a sporting event, that is: a sweepstake race of the State of New Hampshire, as he then well knew; all in violation of Section 1953 of Title 18, U.S.C.

/s/ John T. Curtin
United States Attorney

A TRUE BILL:

/s/ Donald H. Weeker
Deputy Foreman

[fol. 5]

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NEW YORK

No. 8694

[Title Omitted]

MOTION TO DISMISS INDICTMENT—Filed October 12, 1964

The Defendant moves that the indictment be dismissed on the following grounds:

1. That the indictment does not state facts sufficient to constitute an offense against the United States.

2. That the indictment and the Bill of Particulars which were served upon the attorneys for the Defendant herein do not set forth facts sufficient to charge the Defendant with the violation of U.S.C. Title 18, Section 1953.

3. That annexed hereto and made a part hereof is a copy of the indictment and Bill of Particulars served by the United States Attorney, John T. Curtin, and Affidavit of Irving S. Rinde.

DE FILIPPO BROTHERS
Attorneys for Defendant
Office & P.O. Address
408 East Church Street
Elmira, New York

[fol. 6]

ATTACHMENT TO MOTION TO DISMISS INDICTMENT

* * * *

8694-C

BILL OF PARTICULARS

The United States of America in answer to the demand made by the defendant for a bill of particulars dated September 21, 1964, states as follows:

1. It is claimed by the United States that defendant knowingly carried in interstate commerce in violation of § 1953, T. 18, United States Code, 75 written acknowledgements of purchase of State of New Hampshire First Sweepstakes Race of September, 1964.

2. It is not charged by the United States that the defendant violated any State law, ordinances or rules. The United States charges that the defendant violated § 1953, Title 18, United States Code.

Dated: Buffalo, New York, September 24, 1964.

JOHN T. CURTIN
United States Attorney in and for
the Western District of New York
Attorney for Plaintiff
Office and P. O. Address
502 United States Courthouse
Buffalo, New York 14202

[fol. 7]

ATTACHMENT TO MOTION TO DISMISS INDICTMENT

* * * *

AFFIDAVIT OF IRVING S. RINDE

STATE OF NEW YORK)
) SS:
COUNTY OF CHEMUNG)

IRVING S. RINDE, being duly sworn, deposes and says:

That he is an attorney at law and is associated with the firm of DeFilippo Brothers, attorneys for the Defendant herein.

That the Defendant herein is charged only with the carrying in Interstate Commerce in violation of Section 1953, T. 18 United States Code, seventy-five (75) written acknowledgments of purchase of State of New Hampshire first sweepstake race of September, 1964.

That for the purpose of this motion, the Defendant admits that he carried in his possession from the State of New Hampshire to the State of New York seventy-five (75) written acknowledgments of purchase. That a copy of said acknowledgment is attached hereto and made a part hereto and marked Exhibit "A".

That the United States does not charge the Defendant with any violation of any State laws, ordinances or rules.

That Anthony L. Fabrizio, the Defendant herein, is an employee of the Elmira Star-Gazette and has been employed by them for a period of approximately thirty-nine [fol. 8] years. That he has no previous criminal record of any nature.

That he is charged with violation of 1953, Title 18, U.S.C. "interstate transportation of wagering paraphernalia". Said section reads "that whoever, except a common carrier in the usual course of its business, knowingly carries or sends in interstate or foreign commerce

any record, paraphernalia, ticket, certificate, bills, slips, token, paper, writing, or other device, used or to be used or attached, devised or designed for use in (a) bookmaking; or (b) wagering pools with respect to a sporting event; or (c) in a numbers, policy, bolita, or similar game shall be fined not more than $10,000.00 or imprisoned for not more than five years or both". That the effective date of this law was September 13, 1961.

That the purpose and intent of this law is set forth in 1961 U.S. Code Congressional and Administrative News at page 553 which states "an act to provide means for the Federal Government to combat interstate crime and to assist the state in the enforcement of their criminal laws by prohibiting the interstate transportation of wagering paraphernalia".

That at the time of the passage of this bill, Robert F. Kennedy, Attorney General, addressed the House of Representatives at Washington, D.C., which address is set forth in 1961 U.S. Code Congressional and Administrative News at page 2636. That the intent as set forth in said address was to provide the Federal Government with another tool to combat forces of organized crime. Attorney General Kennedy further stated in his address "bookmakers and lottery and policy operators presently thrive [fol. 9] on wide scale interstate operations. State law enforcement agencies have been handicapped by jurisdictional limitations to deal with such operations and the Federal Government is handicapped by lack of statutory authority to assert its full power".

That subsequent thereto and on or about the 30th day of April, 1963, the State of New Hampshire put into effect a state lottery which is controlled by lottery commission of the State of New Hampshire and at its head is a former agent of the F.B.I. by the name of Edward J. Powers, who headed the F.B.I. New England operations.

That the purpose of Section 1953 was to help states enforce their laws, and New Hampshire as a soverign state has passed a lottery law where persons can lawfully purchase tickets. There are no provisions which make it a crime of any nature for a person to have in his possession seventy-five written acknowledgments of purchase of the State of New Hampshire sweepstakes race of Sep-

tember, 1964. That the purpose of the statute is to suppress gangsters and professional gamblers and to prevent them from setting up a pool of their own and to make a profit out of gambling. The purpose and statutory intent of the statute was to help states enforce their own laws, but no where has the Defendant violated any laws of the State of New Hampshire, Vermont or New York.

The further purpose of the statute was to reach people who were part of a gambling or lottery enterprise. The Defendant was not any part of the sweepstakes of New Hampshire. Sweepstake tickets are sold only in New [fol. 10] Hampshire. The acknowledgments which were carried by Mr. Fabrizio were not wagering paraphernalia. They had nothing to do with the sweepstake enterprise and were in no way connected with the enterprise. The carrying in interstate commerce of the acknowledgments that are given to customers who purchase said sweepstake tickets has nothing to do with whether or not the customer who has purchased said ticket will get a prize. The acknowledgment need not be retained. It is valueless. The entire transaction takes place in the State of New Hampshire when the customer goes there and, within the state, he buys his ticket. The ticket remains within the confines of the state and payment is subsequently made within the State of New Hampshire. This would be wholly a state matter and would have no effect on interstate commerce. The intention of the acknowledgment is to be sure name and address is correctly registered with New Hampshire commission in New Hampshire.

It is therefore respectfully requested that the Court grant the Order dismissing the indictment herein.

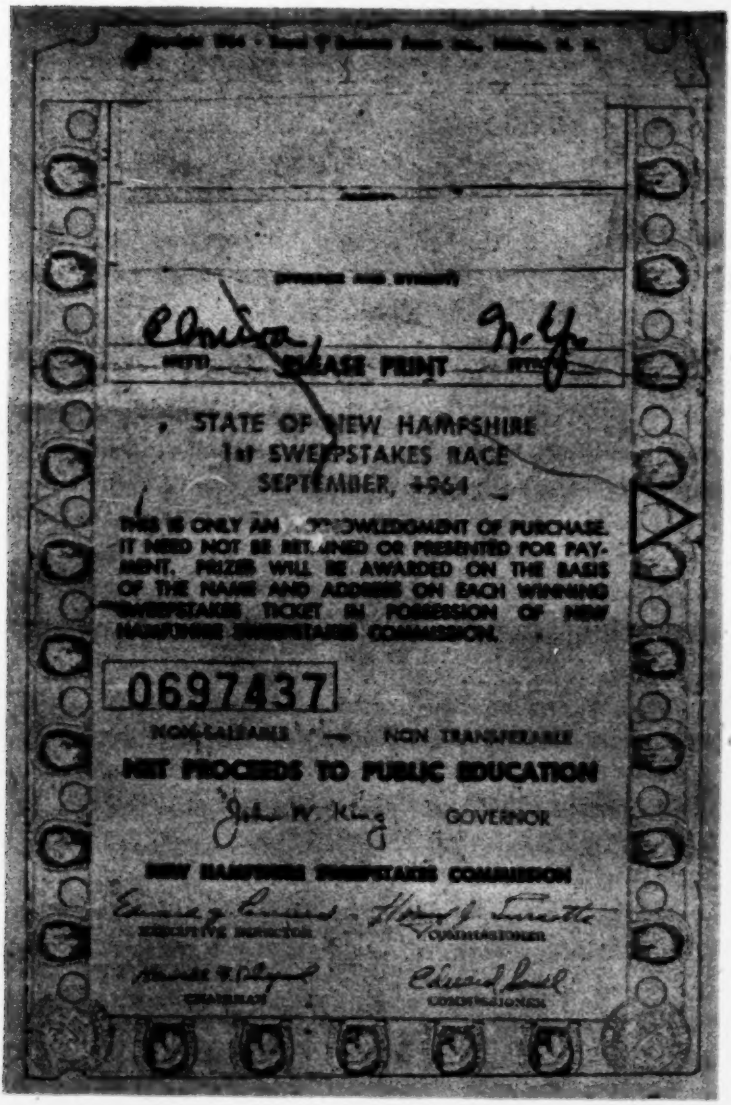
/s/ Irving S. Rinde

Sworn to before me this 9th day of October, 1964.

/s/ Esther L. Mace
ESTHER L. MACE
Notary Public—State of New York
No. 08 7648240—Chemung County
Commission Expires March 30, 1966

[fol. 11]

EXHIBIT "A" TO AFFIDAVIT



STATE OF NEW HAMPSHIRE
1st SWEEPSTAKES RACE
SEPTEMBER, 1964

THIS IS ONLY AN ACKNOWLEDGMENT OF PURCHASE. IT NEED NOT BE RETURNED OR PRESENTED FOR PAYMENT. PRIZES WILL BE AWARDED ON THE BASIS OF THE NAME AND ADDRESS ON EACH WINNING SWEEPSTAKES TICKET IN POSSESSION OF NEW HAMPSHIRE SWEEPSTAKES COMMISSION.

0697437

NON-CALLABLE — NON TRANSFERABLE

NET PROCEEDS TO PUBLIC EDUCATION

John W. King GOVERNOR

NEW HAMPSHIRE SWEEPSTAKES COMMISSION

EXECUTIVE DIRECTOR

COMMISSIONER

CHAIRMAN

COMMISSIONER

[fol. 12]

[File Endorsement Omitted]

[fol. 13]

[File Endorsement Omitted]

[fol. 14]

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NEW YORK

8694-C

UNITED STATES

vs.

ANTHONY L. FABRIZIO

John T. Curtin, United States Attorney,
for the United States

De Fillipo Brothers, Attorneys for Defendant

DECISION AND ORDER—October 5, 1965

Motion by defendant to dismiss the indictment.

The charge in the indictment does not come within the purpose of Section 1953 of Title 18, United States Code, as disclosed in the legislative history of the Act. House Report No. 968, with attached documents to accompany Senate 1657, United States Code Congressional and Administrative News, Volume 2, 87th Congress, First Session, pages 2634-2637.

Motion to dismiss the indictment is granted. So ordered.

/s/ Harold P. Burke
HAROLD P. BURKE
U. S. District Judge

[fol. 15]

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NEW YORK

8694-C

[Title Omitted]

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES—Filed November 4, 1965

I. Notice is hereby given that the United States hereby appeals to the Supreme Court of the United States from the order entered October 5, 1965 dismissing the indictment charging the defendant with a violation of Title 18, U.S.C. § 1953.

This appeal is taken pursuant to Title 18, U.S.C. § 3731.

II. The clerk will please prepare a transcript of the record in this cause for transmission to the Clerk of the Supreme Court of the United States and include in said transcript the following:

1. Indictment
2. Motion to dismiss indictment and supporting papers
3. Decision and order of the Honorable Harold P. Burke filed on October 5, 1965.
4. Notice of appeal.

III. The following questions are presented by the appeal: Whether the carrying in interstate commerce from New Hampshire to New York of acknowledgements of purchases of chances on a sweepstakes race of the State of New Hampshire, which acknowledgements are alleged to be used, adapted, devised and designed for use in a wagering pool with respect to a sporting event, is an offense within 18, U.S.C., 1953, which prohibits the carrying in interstate commerce of "any record, paraphernalia, ticket, certificate, bills, slips, token, paper, writing, or adapted,

[fol. 16] devised or designed for use in * * * wagering pools with respect to a sporting event."

Dated: Buffalo, New York, November 4, 1965.

/s/ John T. Curtin
JOHN T. CURTIN
United States Attorney in and for
the Western District of New York
Office and Post Office Address
502 United States Courthouse
Buffalo, New York 14202

[PROOF OF SERVICE (omitted in printing)]

[fol. 17]

[File Endorsement Omitted]

[fol. 18]

[Clerk's Certificate to foregoing transcript omitted in printing]

[fol. 19]

SUPREME COURT OF THE UNITED STATES

No. 860, October Term, 1965

UNITED STATES, APPELLANT

v.

ANTHONY L. FABRIZIO

ORDER NOTING PROBABLE JURISDICTION—
February 21, 1966

APPEAL from the United States District Court for the Western District of New York.

The statement of jurisdiction in this case having been submitted and considered by the Court, probable jurisdiction is noted and the case is placed on the summary calendar.

* * * * *

☆ U. S. GOVERNMENT PRINTING OFFICE: 1966 211674 680